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LIABILITY OF BANK FOR LOSS OF LIBERTY BONDS

In the case of Pennington v. Farmers' & Merchants' Bank, 237 S. W. 545, 17 A. L. R. 1213, the Supreme Court of Tennessee lays down the general rule as to the care to be exercised by the bailee where the bailment is for the sole benefit of the bailor. It holds the bailee to the use of a degree of diligence and attention adequate to the performance of his undertaking, and declares that care and diligence which would be sufficient as to goods of small value or of slight temptation might be wholly unfit for goods of great value and very liable to loss and injury.

In this case a bank undertook to care for a thousand dollar Victory bond belonging to a customer. The bond was negotiable by delivery, and was lost by the burglarizing of the bank's vault. The vault was old and built of brick without steel lining, and there was no police protection in the town and no lights or watchman in the bank. The bank had a burglar-proof safe in the vault where valuables of the bank's officers and their relatives were kept, and this safe was not disturbed by the burglars. The trial Court directed a verdict in favor of the defendant, but the Supreme Court reversed the judgment of the trial Court, holding that the bank might be found to be negligent in its manner of caring for the bond.

In regard to the effect of usage and custom among banks upon the care exacted of the defendant, the Court stated that it did not think it competent to prove what one or two other banks may or may not have done towards safeguarding their valuables. Likewise proof offered as to the business policy of burglary insurance companies was held incompetent.

Other cases involving the loss by banks of Liberty bonds are, Merchants' Bank v. Affholter, 140 Ark. 480, 215 S. W. 648; Maloney v. Merchants' Bank, 141 Ark. 578, 217 S. W. 782.

In the first mentioned Arkansas case it appeared that a customer deposited with the bank a coupon Liberty bond, payable to bearer, for safekeeping. The bank placed the bond, with others, including some owned by it, in an iron safe, but not in a burglar-proof part of that safe. The safe was blown open and the customer's bond stolen, and the customer brought action against the bank for the value of the bond. It was held that the bank was a gratuitous bailee and was liable only for gross negligence, and further that it was a jury question whether the bank was grossly negligent in not placing a bond of that character in its burglar-proof compartment.

In the Maloney case, which arose out of the same burglary mentioned in the Affholter case, the Court held that an instruction that the bank was only bound to care for the bonds the same as it cared for bonds belonging to itself or officers was incorrect, as the bank might have been grossly negligent in the care of its own property. It further held that evidence that the bank gave the bonds the same care as it gave to bonds belonging to it or to its officers was competent to rebut the presumption of gross negligence arising from the loss of the bonds by burglary.

The Maloney case also lays down the rule that in an action of this kind, where the bond was deposited for safekeeping with the bank and the bank on demand failed to return it, the burden is on the bank to show that it had made some disposition of the bond authorized by the customer, or that it was lost without its fault.

Another case involving the loss by a bank of Liberty bonds is that of Harper v. Elon Banking & Trust Co., 109 S. E. 6, 17 A. L. R. 1205, decided by the Supreme Court of North Carolina. This Court holds that the

bank may be held liable for the loss of bonds by negligence less than gross. It holds the bank to the exercise of the care that a prudent and diligent bank would give its own property of like character, although the bank acts gratuitously. It follows the ruling of the Arkansas cases that a prima facie case is made out against the bank by showing that the bonds were delivered to it and it could not return them.

In passing upon the question of the degree of care required of the bank the Court said: "While it is a general rule that a competent bailee is liable only for gross negligence, the Courts in nearly all recent cases have held that a stricter degree of care is required of banking institutions receiving articles of more than usual value, and holding themselves out as having special facilities for their transmission and safekeeping. In fact, they are not accommodation bailees, for, while a bank may not receive any direct compensation for its service it obtains advantages therefrom in attracting and retaining clients."

The following quotation from the case of Levy v. Pike, 25 La. Ann. 630, 1 Am. Neg. Cas. 497, is in point on this subject:

"Their object was doubtless to increase their deposits, and, of course, enhance their profits; and to accomplish it they held themselves out to the business community as prepared to take care of their valuable boxes. The taking care * * * of these boxes was a part of the business of the bank, by which they doubtless induced cash deposits and made considerable profits. We, therefore, do not regard the deposit in question as only a gratuitous one."

An old negro woman went to the Governor of Tennessee and said: "Massa Gov'na, we's mighty po' this winter and Ah wish you would pardon mah ole man."

"What was he put in for?" asked the Governor.

"'Stead of workin' fo' it, that good-fo'-nothin' nigger done stole some bacon."

"If he's good for nothing, what do you want him back for?"

"Well, you see, we's all out of bacon ag'in."—*Boston Transcript.*

NOTES OF IMPORTANT DECISIONS.

DEATH OF ENGINEER IN DERAILMENT AS OCCURRING IN INTERSTATE COMMERCE.—The case of O'Donnell v. Director General, 117 Atl. 82, decided by the Supreme Court of Pennsylvania, holds that where an engineer was assigned to run an engine to a point within the state at which the engine was to be attached to an interstate train, and to assist in the movement of an interstate freight train, his death in the derailment of the engine during the trip to such point occurred while he was engaged in interstate commerce within the Federal Employers' Liability Act. The case held this to be true, although the engine, after arriving at the point mentioned, might have been used during the day prior to the time it was to be attached to such interstate train, as auxiliary to the hauling and transferring of intrastate traffic.

"The Polk and Di Donato Cases are the most recent decisions of the Supreme Court of the United States touching the questions here involved, and they, in effect, rule the facts at bar. There can be no doubt that plaintiff's husband was engaged in 'a forward move to serve in' interstate commerce, from which he had not dissociated himself prior to the fatal accident. Even if appellant's contention—that engine No. 1676, after arrival at Mt. Carmel, might have been used, during the day, as auxiliary to the hauling and transferring of intrastate traffic—be correct, nevertheless, decedent's purpose, in taking the engine to such point, was not less than a joinder of interstate with intrastate objectives, and, under the authorities above discussed, this would not serve plaintiff on the present appeal."

INSURANCE AGAINST LIABILITY WHILE AUTOMOBILE IS DRIVEN BY MINOR IS ENFORCEABLE.—The case of O'Connell v. New Jersey Fidelity & Plate Glass Insurance Company, 193 N. Y. Supp. 911, decided by the Appellate Division of the Supreme Court, holds that the violation of the highway law of that state by a minor driving an automobile, does not preclude recovery on a policy indemnifying the owner against loss for injuries caused to others by the operation of the automobile. This is the rule laid down by the Court in this case, although it appears that it was not necessary for its decision. The Court cites Messersmith v. American Fidelity Company, 187 App. Div. 35, 175 N. Y. Supp. 169, affirmed in 232 N. Y. 161, 133 N. E. 432, and quoted from that case as follows:

"Here the contract on its face is perfectly legal. It does not purport to indemnify the

plaintiff against damages growing out of * * * an illegal act." Policy as drawn was approved by the state and for a valid consideration. "The plaintiff in this case, to make out his cause of action, was not required to prove any unlawful act."

THE CORPORATE ENTITY DOCTRINE ILLUSTRATED—The most distinctive attribute of the corporation is its existence as a legal entity, separate and distinct from the stockholders who compose it (Queen v. Arnaud, 9 Q. B., 806; People ex rel. Winchester v. Coleman, 133 N. Y., 279).

Even though one corporation owns all or practically all the stock of another, they are nevertheless separate and distinct entities in the eye of the law (Exchange Bank of Macon v. Macon Construction Co., 97 Ga., 1; see, also, Palmer v. Ring, 113 A. D., 643, per Miller, J.).

A striking illustration of the entity doctrine is found in the case of State ex rel. Rogers v. Sherman Oil Co. (117 Atlantic Reporter, 122, Advance Sheets of June 22, 1922) decided by the Superior Court of Delaware. In that case, a petition was filed, asking for the issuance of a writ of mandamus permitting the inspection of certain corporate books of the respondent, the Sherman Oil Co., and also of the Gates Oil Co., of 94 per cent. of whose capital stock the respondent was the owner. It appeared that the corporations were separately managed and independent entities; that their officers and directors were distinct, and that the books and papers were kept in different offices, far apart, in different states. The court held that the writ would not issue in so far as inspection of the books of the Gates Oil Co. was concerned.

It is submitted that the result reached is correct and in accordance with sound principle. A writ of mandamus should not issue, to require a corporation to permit one of its stockholders to inspect the books of another separate and independent corporation, which is a distinct legal entity and a separate artificial person in the view of courts of law, merely because the one corporation is a majority stockholder of the other.—New York Law Journal.

A speaker was irritated by the noise made by the assemblage, "Silence," he roared. "I want this hall to be so silent you can hear a pin drop." There was a deathly quiet for a moment; then an irrepressible youth piped up: "Let'er drop."—*Chicago Legal News.*

SOME POINTS ON THE LAW OF THE PRESS

by

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To present even a summary of the law of the press, with illustrations of its application, would require a voluminous treatise. My present discussion is necessarily confined to a few phases of the subject which, judging from my experience as a lawyer and also a newspaper manager, seem not to have been adequately understood by many publishers.

The law of the press it too often confounded with the law of libel; but the law of libel is only one of its numerous phases. I shall refer only incidentally to the law of libel, for ready references are available on that subject. The libel law has been often and extensively treated.[1]

As the publication of newspapers has developed into a most important industry and as the scope of direct newspaper influence and circulation has become limited only by the limits of population, a jurisprudence of journalism has developed, the knowledge of which is even more important to the publisher or journalist than that of medical jurisprudence is to the physician or surgeon. There are available to the lawyer and the doctor treatises on the law of their professions. On the other hand, the modern publisher of a newspaper, or his lawyer, is put to long searching of the law-digest indexes if he

*Revision of an address before the School of Journalism of the University of Missouri, at Columbia, Mo., May 25, 1922. Reprinted from The Editor and Publisher, New York, with some omissions necessary to bring the article within the prescribed space. Mr. Brown, of the law firm of Brown and Guesmer, Minneapolis, Minn., has had extensive experience in newspaper law and in newspaper management; having been General Counsel for the Minneapolis Tribune and one of its representing members in the Associated Press for over 27 years, Vice President of the Tribune Company for over 24 years, and its President and Executive Manager, having in charge the conduct of all its departments, for about 3 years.

(1) Newell on Slander and Libel; Law Digests, under "Libel"; also see address before the Missouri School of Journalism in 1917, by Frederick W. Lehmann of the St. Louis Bar, University of Missouri Bulletin, Vol. 18, No. 32.

would inform himself of any phase of the law of newspapers other than that of libel.

Even makers of law digests often seem to assume that the only phase of newspaper law which is of any importance, beside that of libel, is the question of what is or is not a legal newspaper. I shall not touch that question, for it is largely one of statutory law which has been fully digested and references to which are readily available. While an important one, it is no more so than, in the treatment of constitutional law, is the question as to what is a constitution.

Newspaper law may be studied from two viewpoints: First, that of the publisher or journalist, having in mind more the practical application as touching upon the conduct of his own business or profession; this viewpoint would also include all questions of ethics of the profession. The second viewpoint is that of the lawyer studying the history of newspapers and of the law applicable to them and searching out the basis of existing statutes and decisions and their value as precedents for the future developments of the law, having also in view the limitations set by the common law and by constitutional law. The one is the practical viewpoint; the other is the more technical or theoretical viewpoint.

It is, rather, from the former point of view that I shall treat the subject, although, of course, I cannot escape the viewpoint of the lawyer.

The Freedom of the Press.—The constitutional guaranties of freedom of the press have been too much misunderstood The Federal Constitution[2] provides that:

"Congress shall make no law.. .. ..abridging freedom of speech or of the press."

The Minnesota Constitution[3] provides:

"The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for abuse of such right."

(2) Federal Constitution, First Amendment.
(3) Minnesota Constitution, Article 1, Section 3.

The Constitutions of most States, including Missouri, have the same or a similar provision.

The federal prohibition is not against any law or statute of the States, but it is confined to enactments by the Congress. There no express prohibition in the Federal Constitution against the enforcement of state legislation in regard to freedom of the press. State laws on this matter are subject to federal review only in cases where they are repugnant to the general federal prohibitions against state legislation, as those of the XIV Amendment.[4]

We hear much of "restraints" or "abridgments" of the freedom of the press, when reference is made to various after-publication penalties, civil and criminal, which are frequently imposed either in statutory or common-law proceedings. This view is a mistaken one. There are many permissible restraints, direct and indirect, on publication which are not "abridgments," of the "freedom of the press" guaranteed by fundamental law. That guaranty is primarily against that pre-publication censorship which prevailed in England until the close of the 17th century and in the American Colonies until well into the 18th century. It was the thralldom of the press under that censorship against which Milton protested in his "Areopagitica." But "freedom of the press" has never meant, and does not mean, a freedom from all restraints on publication either directly or indirectly imposed. There are certain rights of restraint which have always been reserved under and as a part of the constitutional guaranty and which are in law connoted by the term "freedom of the press". They are not outside the guaranteed freedom; neither are they exceptions to it. They are part of it.

(4) Federal Constitution, Amendment XIV, providing that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Censorship in Times of War.—The exigencies of war make the war power, given by the Constitution to the Congress and the President and to the respective States, in many instances, paramount to the fundamental guaranties of liberty, including that of the freedom of the press. For the purpose of protection against aid to the enemy in time of war a very large discretion is given to the legislative power to exercise a pre-publication censorship.[5]

Pre-publication censorship by official censors or by restricted license of publication has been prohibited. Therefore, libels and other publications cannot usually be enjoined.[6] But English statutes allow injunction before publication in certain cases.[7] In this country it has been held that movie-picture productions may be subject to censorship[8] and that an injunction against a boycott or other unlawful conspiracy may rightfully include prohibition against certain publications.[9] In some instances a party to a litigation may be enjoined from speaking or writing to or about another party.[10] So, "freedom of the press" does not mean entire freedom from even pre-censorship, the right to impose which in certain cases still lies with the courts of equity.

Reserved Rights of Restraint.—Except the limited rights of censorship in times of war and certain exceptional cases of censorship by injunction, already referred to, the rights of restraint on publication which have been reserved as part of the rights and immunities denoted by the "freedom of the press" are generally in respect of those classes of restraints imposed by penalties after publication. These are restraints on publication. However, they are in law neither restraints on nor abridgments of the freedom of the press.

Such restraints are usually classified as those under the laws against (1) sedition, (2) blasphemy, (3) obscenity and (4) defamation.[11] But this classification omits a very important class which has been variously defined and which has been upheld on varying grounds. This class is (5) restraints imposed through the exercise of the police powers of the federal and state governments, and of the power of the courts to punish contempts of court. This 5th class applies to publications tending to interfere with the due adminstration of justice by the courts which tend to incite breaches of the peace or to cause riots and disorder or to corrupt public morals, or otherwise injuriously affect the public welfares. There must be added also, if not as of this last class, then in addition to it, such indirect restraints as are imposed by departmental regulations, like those of the Post Office Department.

All these reserved rights of restraint, when imposed and enforced in the exercise of the reasonable discretion given to the lawmaking power, are rights within the freedom of the press, just as much as though they were expressly written as a part of the constitutional guaranty.[12]

(5) For a very able treatment of this subject see "The Civilian and the War Power" by Henry J. Fletcher, 2 Minn. Law Rev. 110; also "The Freedom of Speech in War Time" by Zechariah Chafee, Jr., 32 Harv. Law Rev. 973; Milwaukee Pub. Co. vs. Burleson, 255 U. S. 407.

(6) State vs. McCabe, 135 Mo. 450; Bailey vs. Superior Court, 105 Cal. 94; Brandreth vs. Lance, 8 Paige Ch. (N. Y.) 24; Life Ass'n. vs. Boogher, 3 Mo. App. 173; Howell vs. Bee Pub. Co., 100 Neb. 39.

(7) Odgers' Libel and Slander, 5th ed. 426, 428; Matthews vs. Smith, 3 Hare 331; Kitcat vs. Sharp, 52 L. J. Ch. 134.

(8) Mutual Film Corp. vs. Ohio Ind. Com., 236 U. S. 230.

(9) Marx Clothing Co. vs. Watson, 168 Mo. 133; Gompers vs. Bucks Stove & Range Co., 221 U. S. 418.

(10) Parte Warfield, 40 Tex. Cr. 413.

(11) Patterson, "Liberty of the Press," 5; Cooley's "Const. Lim," 521; 32 Harv. Law Rev. 932; Ex-parte Harrison, 212 Mo. 88; State vs. Trib. Pub. Co., decision by Judge Fisher in Ill. Cir. Ct. of Cook County, Oct. 15, 1921.

(12) As stated by the U. S. Sup. Ct. in Patterson vs. Colorado, 205 U. S. 454, 462, "The main purpose of such constitutional provisions is to prevent all such previous restraints as had been practiced.*** They do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare."

Prof. W. R. Vance of Yale Law School, in his very illuminating "Freedom of Speech and of the Press," 2 Minn. Law. Rev. 239, criticises this language in the Colorado case, and urges that the only rights of restraint reserved are those recognized by the common law in 1787 when American Constitutions were first adopted. Such distinction would not be sound, if confined to only those restraints, or kinds of restraints, for which the statutes and decisions prior tto 1787 show concrete precedents. However, (and this seems to be the real contention of Prof. Vance), if the reserved restraints, afterwards permissible within the constitutional guar-

I next call your attention to some illustrations of the exercise of these rights of restraint by imposing penalties after publication.

Rights of Restraint Exercised Under Federal Law.—Restraints under federal jurisdiction may be imposed by acts of the Congress or by the judgment of federal courts in cases within their jurisdiction. Through its constitutional power to regulate commerce between the States, the Congress can penalize transportation of obscene matters and other publications detrimental to morals or to the public welfare. Independent of its powers over commerce, it may prohibit and punish the publication of seditious utterances, both directly and indirectly. Federal courts may punish for publications which are made contemptuous either by federal statute or by the common law. Independent of statutes, there always belongs to courts an inherent power to punish for contempt. As applied to contempt by newspaper publications, Chief Justice White, in the Toledo Newspaper case, cited herein, said that the power given by statute "conferred no power not already granted and imposed no limitations not already existing * * * but conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation, that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judical power given, accordingly." This federal power is in many instances similar to that exercised by the legislatures and courts of the respective States.

The greatest federal restraint on publication is through the power of the Congress to regulate the mails.

Restraints by Regulation of the Mails.—Through its power to regulate the mails, the Congress has a power of restraint on publication which is tantamount in some instances to a pre-publication censorship. Whatever be the class of postage, it may prevent the use of the mails to transmit obscene matter or advertisements of prohibited enterprises, such as lotteries or schemes to defraud, and the like.

This federal power is generally exercised through its regulation of second-class postage, under which come newspapers and all regular publications. In the public interest of disseminating knowledge and information, newspapers and regular publications, when coming within proper classification, are allowed the use of the mails at a postage rate of only about 5% to about 20% of the first-class rate, varying according to zones and the proportions of reading and advertising matter. Formerly one second-class rate applied to all parts of the United States, irrespective of distance. Then the zoning system was established which increased the postage rate on second-class matter as the distance from point of mailing increased. The result was, that in many zones outside of the first zone, newspapers found that their postage-cost exceeded the subscription price or any price at which they could maintain their subscribers in distant zones. When we remember that some of the issues of the great metropolitan dailies weigh several pounds and that the subscription lists of some of those have extended from coast to coast we can appreciate the restraint on

anty, be taken to be such as are in accordance with the principles of the common law at 1787, then we have a workable distinction based upon the common law. For, applications of principles must vary as the times and circumstances vary. The principle of right of prohibition of blasphemy remains in force, but what is properly prohibited today as blasphemy would be quite different from what was prohibited in England or in the American Colonies prior to 1787. The principle of the common-law offense of contempt persists, but not its common law application. So the principle of police-power statutes or regulations to protect the public welfare was a common law principle and still remains so, but may be exercised without any precedent, or even contrary to precedent, so far as shown in particular restraints under the common law prior to 1787.

In effect therefore, it would seem that the basis of defining reserved rights of restraint stated by the Federal Court in the Colorado case.—subsequent punishment for what may be deemed contrary to the public welfare—and that which is urged by Professor Vance, present a distinction without any real difference, except that the latter is historically more precise and more logical and consistent.

publication which is effected by the zone system. But no lawyer would assume to question the constitutionality of such restraint. It is within the powers of the Congress in its regulation of the mails.

For the same reason there is no obvious ground for questioning the right of Congress to change its various rates of postage, including that of second-class matter, or to make any regulations as to the manner of delivery or which pertain to the financial or business operations of the Post Office Department.

However, the regulations have gone much further. By the so-called "Rider Act" of Congress, August 14, 1912, regulations of newspapers are imposed which do not pertain at all to the finances or operation of the Post Office Department. They are strictly regulations of the publications themselves. In order to be entitled to go through the mails as second-class matter newspapers must file with the Post Office Department and publish every six months sworn statements of the identity of their publishers and editors, the names of their owners and (if incorporated) of the stockholders, and in the case of bonded indebtedness, the names of the holders of the bonds, and other like details. In the case of daily newspapers there must also be included a sworn statement of the bona fide net paid circulation. This forced publicity of the private affairs of the publisher was met with a storm of protest against its constitutionality on the ground that it interfered with or abridged the liberty of the press.

But even more vehement was the protest against another section of the same law by which anything in the form of editorial or reading matter published in any newspaper, magazine or periodical, for which money or other valuable consideration is paid, accepted or promised, must be plainly marked "advertisement." The protest against this provision was not so much because it was not a wholesome means of advancing the standards of newspaper publication, as because it pertained to a matter obviously touching only the business or editorial policy of the publications affected. It was claimed, therefore, that it was an attempt by the Congress unconstitutionally to abridge the liberty of the press. The Federal Supreme Court held that the Act was constitutional because it only imposed conditions which must be complied with in order to entitle the publications affected to a right to use the second-class mails. The court refused to go into the question of the motives or purposes which promoted the legislation or the results of its enforcement, on the ground that it would not intervene to restrain "the exercise of lawful power on the assumption that a wrongful motive or purpose has caused the power to be exerted."[13]

The law was, therefore, settled that the power of the Congress to establish post offices and post roads included the power of selection as to what should or should not be carried in the mails, without reference to the extent or nature of the prohibition and irrespective of its effects on the publications concerned. It is under such a ruling that attempts have been made in the Congress to exclude from second-class mails publications which have more than a certain weight per issue or whose space used for advertising is greater than a certain proportion of its reading-matter space. Here, then, is a federal power which, although not so in theory, is in fact a power of pre-publication censorship.

It may be assumed that, so far the sworn statements of the personnel, ownership and bondholders, circulation, etc., are concerned, the publishers generally do not, by incorrect statements, run the risk of the penalties for perjury or of exclusion from the mails. However, even on this point evas-

(13) Act of Congress. Aug. 24, 1912 (37 Statutes at Large, Chap. 389, p. 553); Also James M. Beck on "Federal Censorship of the Press," 45 Chicago Legal News, (Sept. 1912); 27 Harv. Law Rev. 27; Lewis Pub. Co. vs. Morgan, 222 U. S. 288.

ions of the statute are not impossible, and probably exist in many instances.

What Is a "Publisher"?—The Federal Act requires a sworn statement as to who is the "owner" and also who is the "publisher" of the publication. Sometimes a person or company is the "owner" of a paper, but has certain contracts by leases or otherwise, under which the person who operates the publication or who is actually responsible, morally and legally, also financially, for the publication is someone other than the owner. Such person is then the "publisher." The object of the Federal Act is to have furnished information every six months of the identity of these two parties in order to facilitate the locating of both the moral and legal responsibility for the publication and to show what interests are back of it. Where a person or company is owner and at the same time operates the plant and is in fact the one who "publishes," then the names of the "owner" and of the "publisher" are identical. The term "publisher" is not a mere title which can be assumed or conferred independent of the fact of who is actually the publisher. It is not a mere title or name of convenience like that of "business manager" or "editor", who are assumed to be selected and given their titles by their employer. The question of who is publisher is one of fact, the truth of which fact is required to be sworn to as part of the return required under the Federal Act. There is no law against an employee of the owner and publisher signing his name to unsworn letters and circulars as "publisher", although he might thereby become estopped to deny personal liability for libel or other claims if suit were brought against him instead of against the person or company who is in fact the publisher. Otherwise, however, in complying with law requiring a sworn statement as to who is in fact "publisher".

Who Are "Stockholders" and "Bondholders"?—The purpose of the requirement of the Federal Statute for a sworn statement as to who are the stockholders and bondholders, is to identify those who are backing the publication, either directly or financially. The statute as enforced requires any trustee holder of stock or bonds to disclose the names of those for whom he holds. But the naming of the bondholders is often not sufficient to accomplish the object if the statute. Its purpose is avoided (or evaded) in many instances by refraining from issuing "bonds" on the newspaper property. The owner or the stockholders hypothecate their stock, or other property not a part of the newspaper plant, on their personal notes. Then the return is made that there is "no bonded indebtedness". Similar return can now be truthfully made by a personal or company owner who has a large unbonded indebtedness outstanding consisting only of floating obligations, either in the form of short term notes or accounts payable. Under such circumstances the power of control or influence by creditors over the business and editorial policies of the news paper might be vastly greater than if they were bondholders under a trust deed of the entire newspaper plant and property.

What Is an "Advertisement"?—There are also many opportunities for evasion and breach, without punishment, of the provisions of the Federal Statute requiring all reading matter for which money or any other consideration, direct or indirect, is paid, to be marked "advertisement". The penalty for breach of this provision is possible suspension from second-class mail. There are many palpable instances where matter, which is clearly paid reading matter, is not so marked, but appears as free publicity. Compare the display advertising space used by various advertisers, particularly theaters and public-show houses, with the amount of lineage of "write-ups" which appear in the news columns, with elaborate illustrations. In many instances the proportion

is uniform and often if there is no display advertisement there is no reading matter write-up. It may be that merchants and advertisers of automobile and other industries get "reading matter" in proportion to their paid display advertisements. In these and other ways is not "money or other valuable consideration paid, accepted or promised" for reading matter which is not marked "advertisement"?

Infringements of the Federal Statute in this regard are often also infringements of the state statutes, particularly in those states where paid political advertisements, whether display or reading matter, have to be so marked, including the amount paid and from whom received.[14]

The practice had been with many newspapers that display advertising of political candidates, and even reading matter containing interviews and arguments, for which payment was taken, would be published without sufficient notice to the reader as to whether the matter published did or did not express the views of the paper. This is now prohibited by both the federal statutes and the state statutes of the kind stated. One is safe to say that many direct and indirect infringements are very common. The Federal Statute does not compel paid political matter which is put in display type or space to be marked "advertisement," as do the state statutes referred to.[15]

Rights of Restraint Exercised Under State Laws.—If not extended to a prepublication censorship, the power of state legislatures to regulate or to penalize publications, exercised within reasonable limits, is upheld. Such statutes are not "abridgments" of the liberty of the press but are the exercise of the reserved rights of restraint which are a part of the constitutional guaranty. A former Minnesota Statute, regulating the execution of sentence of death, provided that

"no account of details of such execution beyond the statement of fact that such convict was on the day in question duly executed according to law, shall be in any newspaper."

Against the contention that the statute was unconstitutional as abridging the freedom of the press, the court held it valid, on the ground that any restriction which was in the interest of public morals, even if the matter be not in itself blasphemous, obscene, seditious, or scandalous, could be enforced; and that restraint on the publishing of details of a criminal execution was a proper exercise of the discretion of the legislature in deciding what is or is not detrimental to public morals.[16]

On the same ground have been upheld statutes against the publication of blasphemous, obscene, seditious or scandalous matter; also other statutes enacted under the police power to protect the administration of justice, public morals, and the public welfare.[17]

The Law of Libel.—As I stated at the outset, I shall not dwell upon the law of libel although that is one of the most important branches of the law of the press, under the statutes and common law both of England and of this country. Libel is defamation of a person, or of any association, or of any corporation not exclusively of a governmental or municipal character. What is or is not libel and what the defenses are and what may be pleaded in mitigation are governed by various state statutes, based upon the constitutional guaranty of the freedom of the press,

(14) Sec. 568, General Statutes, Minn. 1913.

(15) To protect readers from being misled, it was always the policy of the Minneapolis Tribune, to refuse paid advertisements, consisting of pictures of or advocacy for political candidates, even in display advertising, much more so in reading matter; and the Tribune did not take such advertising, at any price or at any time, until the State Statute, together with the Federal Statute referred to, required full notice to the reader of the nature of the publication. Even then it enforced the right which it always reserved to reject advertising of improper matter—including that of unfit candidates.

(16) Revised Statutes 1905 Sec. 5422; State vs. Pioneer Press, 100 Minn. 173; So in Connecticut a Statute was upheld penalizing publication of even true reports of lust and crime, pictures and stories of bloodshed, police reports and criminal news in such a way as to be injurious to public morals, State vs. McKee, 73 Conn. 18 (1900).

(17) Patterson vs. Colorado, 205 U. S. 545, and other citations herein.

which makes the publisher of any prohibited matter responsible civilly or criminally for a defamation. As usually expressed in the constitutional provision, while the liberty of the press is assured, nevertheless all persons shall be "responsible for the abuse of such right." Contrary to the old English rule that the greater the truth the greater the libel, the American rule generally is, that if the truth is pleaded and shown it is complete defense. Questions of privilege, of good faith, of malice and all questions connected with libel are covered and indexed under the head in all law digests and reports, and have been fully presented in treatises on the subject.[18]

As to liability for libel I shall here mention only the recent celebrated Chicago Tribune case where the City of Chicago sued the Tribune Company for $10,000,000 for charging that the city was misgoverned and that thereby the municipality had become bankrupt and insolvent. It was held that, no matter what the truth or falsity of the statement, an action for libel of a city does not lie.[19]

A publisher is responsible for libelous matter even when accompanied by the signature of the writer or when copied from other newspapers. There seems to be a tradition among reporters that liability for misstatements is avoided by repeatedly including such terms as "so Blank says", or "acording to Blank", or "in the opinion of Blank", or "it is said", or "the report is" so and so, or by repeating the word "alleged", or by similar phases. This is a mistaken idea. Liability depends upon the truth or falsity of the statement published. The question of good faith and of the credibility of sources of information are matters of fact to be pleaded and proved to negative malice and in mitigation of damages.[20]

In England the publisher or editor is not criminally liable personally unless he published with knowledge or without using ordinary care for prevention, although he is civilly liable even without knowledge of or participation in the publication, except as implied from his position; and in criminal cases lack of knowledge and all the circumstances as to the personal guilt can be shown in mitigation.[21] The rule is generally the same in this country.[22]

However, under the modern method of collecting and publishing news, and with the time limit between receipt of news items and their publication on the streets, a matter of only a few minutes, the hazard of innocently publishing libelous matter is greatly increased. The item may not show on its face any possibility of libel. It may give a wrong name or a wrong address in identifying the parties referred to, and it may come in over the wires with the apparent authenticity of a reliable news service. If the old rule as to damages and as to submission of questions to a jury had been continued without restriction, the newspaper business would have been made so hazardous as sometimes to stop publication. Persons concerning whom misstatements, however so trivial, were made, became speculators in libel suits in which sometimes actual and punitive damages were sought equal to or greater than the entire value of the newspaper. To protect the proper exercise of the great public function of the newspapers, many States have passed so-called "retraction statutes" whereby one complaining of a libelous publication must serve on the publisher a

(18) Newell, Slander and Libel; Odgers', Libel and Slander, etc.

(19) City of Chicago vs. Tribune Co., decision by Judge Fisher of the Circuit Court of Cook County, Oct. 15, 1921. Judge Fisher held that restraints on the freedom of the press which were available despite all constitutional guaranties, came under four heads, blasphemy, immorality, sedition and defamation. No question as to any of the first three arose in the case. Defining defamation, he held that defamation or libel is that class of prohibited publications which affect only the private person, and that to prohibit or penalize libel of a city was not only without precedent, but would be an unconstitutional restraint on the freedom of the press. Included in the "private persons," are private corporations and associations, as distinguished from municipal or governmental corporations.

(20) Newell on Slander and Libel; Hewitt vs. Pioneer Press Co., 23 Minn. 178; 19 Albany Law Journal, 188.

(21) 66 Law Times, 164.

(22) Sec. 8648, General Stat. Minn. 1913.

notice of retraction. Then if the publisher within the time limit publishes a retraction, and shows that publication was made in good faith or without malice, the complainant can recover only actual damages.[23]

It often happens that a publisher finds he has made a mistake, which under the circumstances was unavoidable and in the utmost good faith, and is more than willing to do justice to the libelee by publishing a statement which is more adequately a correction of the libel than that which is required by statute. The statutory retraction must refer to the original charges and specifically retract each defamatory statement. The statute is complied with if the defamatory statement is republished verbatim and thereto are added the simple words "we retract this". Such a perfunctory retraction, although within the law, is not as desirable, either from the viewpoint of the publisher or from that of the libelee, as a whole-hearted, good-faith explanation of all details and causes for the mistake and with many expressions beyond statutory requirements. Nevertheless, the latter may be insufficient under the retraction statute.[24]

Sometimes such a whole-hearted and good-faith retraction is orally pronounced satisfactory by the complainant or his attorney; and then after it is published and after the time limit for retraction has expired, the retraction is disregarded on the ground that it does not comply with the statutory requirements and the publisher is unduly mulcted.

For these reasons I have followed the practice, and I commend it to you, after notice of retraction the complainant be given the choice between a strictly legal retraction and one of the kind which should be more accepted to himself and to the publisher, but on the condition that, in case he chooses the latter and the same is published, he agrees in writing, either that it satisfies his demands for a retraction, or, what is better, that in consideration of its publication on a certain date, in certain place in the paper, and in certain type, he releases all claims for damages. In serious cases this may be accompanied by payment of a nominal sum or other sum as a further consideration, although such additional consideration would not be neecssary to make the release binding.

However, when you have published the truth, and especially when its publication is in the interests of public morals or of public welfare, neither retract nor settle. Never disgrace yourself before the public as a craven, nor become an "easy mark" for extortionists who would gamble on your fear of a lawsuit.

Trial by Newspapers.—There is nothing more detrimental to the administration of justice than the growing prevalence of the trial by newspapers of civil and criminal cases outside of court and before a jury of public opinion. In this regard many offenses are daily committed by newspapers which, by reason of statutory provisions or of the general law regarding contempt of courts, constitute offenses punishable either by contempt or by proper proceedings. But further legislation, and if necessary constitutional amendments, should be enacted to protect not only the courts themselves and the public, but also those who are parties to civil or criminal proceedings, from the stirring up of popular bias in advance of or pending an adjudication by the courts of the questions of law and of fact which are involved.

Pre-publication censorship and injunctive orders are unfeasible. They would be an abridgment of the freedom of the press, as already shown. However, the law-making power still retains the right to punish

(23) Sec. 7901 Gen. Stat. Minn. 1913. Such retraction statutes now exist in many States. In Minn. there are only two cases of defamation to which the retraction statute cannot apply: (1) to libels against candidates for election to public office if published within a week before election, and (2) to females in respect of unchastity.

(24) Gray vs. Times Newspaper Co., 74 Minn. 482.

for publications which are detrimental to morals or which tend to prevent the proper administration of justice by courts.

The participation or even connivance by lawyers in such publications is a breach of legal ethics and is also unlawful.[25] These rules of legal ethics are enforcible by discipline and disbarment. It is regrettable that the profession of journalism has not been so organized that it has a recognized code of ethics which would compel publishers to answer to charges of unethical conduct not only in respect of this evil of trial by newspapers, but in other respects.

The abuse of trial by newspapers is greater in criminal cases than in civil cases. From the time of the committing of the crime to the apprehension of suspected parties, through their preliminary examination and the trial, all sorts of statements concerning facts and suspicions are published with glaring headlines and these statements purport to detail evidence most of which no judge would ever allow to be presented in court. First, second and third degree hearsay evidence of irresponsible parties, sometimes for the express purpose of destroying the facts and misleading the public and the prosecuting attorneys, and without the protection of even an informal oath, and sometimes without even identifying the sources of the purported information, — all are played up until the mental atmosphere of an entire community within which the trial must take place is poisoned forever and a fair trial is impossible. In many cases the juries start their deliberations in a mental attitude, unappreciated even by themselves, which disqualifies them from a fair consideration of the evidence presented before them in court. For these reasons the burden of proof is often shifted, and there is in fact enforced the ancient and obsolete rule that the presumption is of the guilt of the accused rather than the now established rule to the contrary.

The present vicious practice of publishers in this respect is based upon the sentiment that "if I don't do it others will"; and it is assumed that "the others" will gain in their competition for circulation, to the comparative damage of the publisher who restrains himself within the limits of propriety.

In the celebrated Frank case in Georgia the newspapers outside of the State, and particularly New York City newspapers, carried on such a venomous fight in behalf of Frank and against the prosecuting authorities of Georgia, continuing even after his conviction had been sustained by the State Appellate Court and by the Supreme Court of the United States, that a Georgia mob was aroused to show resentment against the interference of the outside press by taking Frank from his place of confinement and putting him to a horrible death.[26]

Because of the well-known sensational and unlawful interference of the newspapers in cases that are pending in court, there are diminished, and in many cases entirely taken away, the constitutional guaranties that no person shall be deprived of his life, liberty or property except by due process of law. This is so because often the very functions of the courts and of the jury are paralyzed or perverted by reason of the unrestrained, unscrupulous and distorted proceedings of this system of trial by newspapers.

Even without further legislation there already exist many lawful restrictions upon trial by newspapers, and these have been enforced as provisions promotive of public morals and in aid of the proper administration of justice. The courts have certain common-law rights of punishment by

(25) 20 Canons Amer. Bar Asso.; Carter on "Ethics of the Legal Profession," p. 71; Costigan "Cases on Legal Ethics," p. 166; 70 Albany Law Journal, 318; Va. Law Register, p. 222; State vs. Shepard, 177 Mo. 205. Toledo Newspaper Co. vs. U. S., 247 U. S., 402.

(26) Va. Law Reg. n. s., 384; 20 Va. Law Reg. 209.

contempt for commenting on civil or criminal cases while pending in court.[27]

In this country we have a common-law power of courts to punish for contempt and we also have statutes making it contempt of court to comment on proceedings pending in court. A Minnesota statute makes a criminal contempt of court "the publication of a false or grossly inaccurate report of its proceedings."[28]

There have been many instances, including some in Minnesota, where the daily papers have published, with many partisan comments, pictures of documents and other evidence which had been offered and rejected by the court in a pending trail. Even if in theory the juror's duty, or his oath, would prevent him from seeing such matter while the case is pending, in fact, it gets to him by some method either direcly or indirectly. Even if the jury is kept together during the entire trial and locked up over night and during its final deliberations, the atmosphere of prejudice from the outside percolates into the jury box and into the jury room as effectively as does knowledge of the changes in the weather or of day and night. Nor is it without effect upon the judges themselves, however impartial or independent they may be. Any publication relating to a cause pending in court tending to prejudice the public as to its merits, and to corrupt or embarrass the administration of justice or reflecting on the tribunal or its proceedings, or on the parties or jurors, witnesses or counsel, may be punished as a contempt.[29]

Further Restrictions on Trial by Newspapers Needed.—In order to prevent abuses of trial by newspapers, further legislation should be enacted, not only to the end that the existing powers of the courts in this regard may be extended, but also by statutory enactment to emphasize the duty of the courts and of public prosecutors to protect the administration of justice in this regard. Courts hesitate too much to exercise the safeguarding powers which they already have in this respect. Judges are too prone to fear that their initiation of proceedings for contempt or other prosecution against improper newspaper interference with the courts might be considered as steps for the defense of their own personal dignity or position. Judges overlook too much their duty, not only to pro-

(27) Rex vs. Parke, 2 K. B. 432; Rex vs. Davies (1906) cited in 56 Law J. 47; 85 Justice of the Peace 18.

In some English cases it has been held an indictable offense to comment on proceedings sub judice. In 1901 an editor and reporter of a London paper were convicted by indictment for unlawfully attempting to pervert the courts of justice and to prejudice a fair trial in criminal cases—65 Justice of the Peace, 753. In 1902 in the case of Rex vs. Kenworthy, defendant was convicted for breach of a rule of law that had been laid down in many cases,—that it is a misdemeanor for newspapers or individuals to publish comments on civil or criminal matters which are sub judice, citing the case of Rex vs. Tibbits, 85 L. T. Rep. 521, 1 K. B. 77, and the case of Rex vs. Jolliffe, decided in 1891.

(28) Section 8582 Gen. Stat. Minn. 1913. This Statute confines the offense to publication of "false or grossly inaccurate" reports, etc. This limits the generally reserved right for a publisher to publish court proceedings; but the Statute does not negative the common-law right of the court to punish interference with the administration of justice by publishing comments or evidence extraneous to record of official proceedings.

(29) Percival vs. State, 45 Neb. 741; 50 Amer. State Rep. Anno. 568; State vs. Frew, 24 W. Va. 416; 50 Amer. State Reports, Anno. 568; also In re Providence Journal Co., 28 R. I. 489; 3 Ill. Law Rev. 39. Ex parte Nelson, 251 Mo. 63; 47 Amer. Law Rev. 918; State vs. Shepard, 177 Mo. 205.

The editor of the Boston Traveler was convicted of contempt for commenting editorially on a manslaughter case and the Supreme Court refused to intervene. See 33 Amer. Law Rev. 118.

In a later case the Mass. Supreme Court said:

"It is the inevitable perversion of the proper administration of justice to attempt to influence the judge or jury, in the administration of a case pending before them, by statements outside the court room and not in the presence of the parties, which may be false, and even if they are true and in law not admissable as evidence." Per Field, C. J., Telegram Newspaper Co. vs. Commonwealth, 172 Mass. 294, 300.

Another noted instance of attempted trial by newspaper was the case of Nan Paterson in 1905. New York, when a daily paper had the wives of the jurors interviewed. The reporters discussed the case and got the opinions of the wives as to the guilt or innocence of the accused. 17 Green Bag, p. 225.

In the case of McDougal, Atty. Gen. vs. Sheridan et al, the Supreme Court of Idaho in Oct. 8, 1913, 23 Idaho 191, included in the classifications of publications which constitute contempt of court the following:

"First, those in which it is claimed that the object of the publication was to affect the decision of a pending cause; second, those which have for their apparent purpose bringing of courts, judges or other officers constituting an essential part thereof into discredit." See comments on these cases in 50 Am. St. Rep. 574, and 6 Lawyer and Banker (1913), p. 73. Also 1 Georgetown Law Journal, 177.

The right of the publisher to publish reports of judicial proceedings is confined to a fair and impartial report and any misstatement of proceedings or unjustifiable comments on the members of the court even after the trial is terminated, subject the publisher to punishment. See Sweet vs. Post Pub. Co. (Mass.) 122 N. E. 660; 17 Law Notes, 154; In re Fite, 75 S. E. (Ga.) 397; 1 Georgetown Law Journal, 177.

tect their own court functions, but also to insure fairness to litigations and to safeguard the entire system of the administration of justice, of which they are only a part.

In Minnesota and other States the abuse of trial by newspapers has gone to the extent of interference with the duties of the grand jury. In some cases the witnesses who are to be or who have been called before a grand jury, and even the grand jurors themselves, are interviewed in regard to cases before the grand jury. Such interviews, or what purport to be, are sometimes published from day to day as the investigation proceeds, together with comments and suggestions entirely extraneous to any proceedings in the grand jury room or which could come before the grand jury. The law contemplates that the proceedings of the grand jury shall be kept secret and that even the names of witnesses shall not be disclosed and until returned upon an indictment. Such publications are clearly offensive and constitute contempt of court.

Even more so, the practice recently indulged in by certain Los Angeles papers in the first of the famous Burch murder trials. With the connivance of certain lawyers these newspapers sent reporters to spy upon jurors after they had been locked in their rooms to reach a verdict. During their several days' deliberations many of the innermost secrets of the jury room were obtained and reported, including the arguments, conversations and gestures by the jury members in their deliberations, and even statements, or surmises from what was seen or overheard, as to how this or that juror stood and as to what were the results of the successive votes.

These practices could not be continued if either the lawyers or the newspapers observed either their legal or ethical duties to the courts and to the public.[30]

This question of the abuse of trial by newspapers came before the New York Constitutional Convention of 1915 and Ex-President William H. Taft (now Chief Justice of the United States) recommended a provision by which might be abolished this "unmitigated evil," saying, "The greatest evil and the most vicious one in this State is that of trial by newspapers."

He further stated:

"I don't see anything that can mitigate this evil of trial by newspapers. I don't see why in making this new Constitution you cannot do something to protect the adimnistration of justice, even if it should involve a modification of the freedom of the press and permit the legislature to pass reasonable laws along the lines that I have suggested."

He said that he would retain the necessity of unanimous vote by juries even if it were only

"to protect the defendant against one of the greatest evils,—perhaps the most vicious one arising in connection with criminal cases—trial by newspapers. In many instances the defendant is convicted in newspapers ahead of time, and the judge has the greatest difficulty in handling the case because of the atmosphere by which it has been surrounded through such newspaper publications. I think there should be the requirement of a unanimous verdict to offset this."[31]

Judge Lamm, former Chief Justice of the Missouri Supreme Court, in an address before the School of Journalism at Columbia, Missouri, about the same time, said that he wished to warn the budding editors and molders of public opinion against the hasty and ill-advised criticism of the courts and their decisions. He urged that criticism of court decisions should be given only together with a fair synopsis and that any unsoundness should be pointed out, saying:

"If the point is abstruse you can let it alone or inform yourself by investigation.

(30) 6 Minn. Law Rev. 427 (May 1922); Judge Hand (N. Y. Fed. Ct.) on Feb. 12, 1915, took from the jury the case of Kleist vs. Breitung, then pending in court for alienation of affections, and sent it to the foot of the calendar for the reason that an interview with the plaintiff had been widely featured by the morning papers; 28 Harvard Law Review, 605, with comments on the case of Toledo Newspaper Co. vs. U. S. 247 U. S. 402; Globe Newspaper Co. vs. Commonwealth, 188 Mass. 449.

(31) Va. Law Register, n. s. (July, 1915) 226.

If the court is enforcing a statute and you do not like it, your grievance is against the statute and lawmakers and not against the court, and you should say so. The excuse of necessary haste, or of striking while the iron is hot can never be allowed for a misstatement or slovenly statement."

* * * *

CORPORATIONS—FORFEITURE OF STOCK.

QUINTET OIL CO. v. BIG FIVE OIL CO.

205 Pac. 949.

Supreme Court of Col., April 3, 1922.

Where stockholders of a corporation were associated under a written agreement, giving the corporation power to levy assessments on stock with a provision for forfeiture of stock of a stockholder not paying the assessments, and the stock was non-assessable except for the agreement, an assessment on stock could not be recovered in an action against its owner; forfeiture being the only penalty for failure to pay.

Thomas & Thomas and J. I. Hollingsworth, all of Denver, for plaintiff in error.

Howard & McCrillis, of Denver (Harold H. Healy, of Denver, of counsel), for defendant in error.

Allen, J. Defendant had judgment. Plaintiff brings the cause here for review. Holders of shares of the capital stock of plaintiff corporation, including the defendant, were associated together by written agreement to aid in the development of a certain tract of land for oil. By this agreement and subsequent action of the plaintiff, the plaintiff might designate and levy an assessment on each share of stock as it might be necessary to raise funds for such development purposes. The defendant paid its assessments so levied, for a time, but finally ceased and refused to pay subsequent and further assessments. Plaintiff brought this action to recover from defendant the amount of assessments alleged to be due.

The agreement provided:

"In case any party hereto fails to put up his share of the expense, he forfeits all his interest herein to the other parties share and share alike."

The minutes of plaintiff company show that upon a failure to pay such assessments by the holder of stock within 30 days after notice, there should be a forfeiture for non-payment to the other stockholders who did pay. Without the agreement the stock was not assessable.

The provision of forfeiture of defendant's stock in case of default in the payment of the assessment thereon was the penalty prescribed in the agreement, and adopted by plaintiff company, for such default, to the exclusion of any further burden. The plaintiff could have no remedy but forfeiture. The trial court entertained this view, and gave judgment for defendant on the pleadings.

We find no error in the record. The judgment is affirmed.

NOTE—*Power of Corporation to Forfeit Stock for Non-Payment of Subscription as Exclusive Remedy.*—In some of the States it has been held that in the absence of an express promise to pay, if the charter of a corporation provides for the forfeiture or sale of stock in the event of non-payment of assessments, such remedy will be regarded as exclusive. 93 Am. St. Rep. 334. Where, however, the promise to pay for shares is express whether it be contained in the agreement of subscription or results from a provision in the law, in contemplation of which the subscription is made, a provision that the stock may be forfeited or sold for non-payment of calls will not exclude the remedy of an action at law upon the promise to pay. Where there is an express promise to pay, the right of the Court to forfeit or sell the shares for delinquent calls is cumulative merely and does not bar an action to enforce the personal liability of the subscribers. 93 Am. St. Rep, 354, and cases cited therein.

According to the doctrine in certain States, a subscription to the stock of a corporation raises no implied promise to pay for it, at least where a remedy of forfeiture or sale is provided by the charter in the event that the subscriber becomes delinquent in the payment of assessments. In the view of these courts such a remedy is exclusive, and unless there is an express promise to pay, no action lies against the subscriber to recover the unpaid amount of his subscription.

"It is a rule founded in sound reason that when a statute gives a new power and at the same time provides the means of executing it, those who claim the power can execute it in no other way. When we find a power in the plaintiffs to make the assessments, they can enforce the payment in the method directed by the statute, and not otherwise; and that method is by the sale of the delinquent's shares." Andover, etc., Turnpike Co. v. Gould, 6 Mass. 40, 4 Am. Dec. 80; 93 Am. St. Rep. 356.

The rule supported by the weight of authority is that a contract of subscription to the capital stock of a corporation imposes an obligation to pay for such stock, although there is no promise in terms to do so.

For cases holding pro and con on that question, see note appended to the case of Gettysburg National Bank v. Brown, 93 Am. St. Rep. 349.

ITEMS OF PROFESSIONAL INTEREST

REPORT OF THE MEETING OF THE OHIO STATE BAR ASSOCIATION.

The report of the Forty-Third Annual Meeting of the Ohio Bar Association, held at Cedar Point, July 5th, 6th and 7th, evidences a very lively interest among the members of the bar of that state, the enrollment showing 1547 active members of the Association. The attendance at this meeting was the largest ever held at Cedar Point.

"The Position and Influence of the Lawyer in American History," was the subject of the address of the president, Mr. C. E. McBride of Mansfield. Hon. Major Thomas Melville, Attorney General of Bermuda, read a paper treating of the history of the Islands and the development of the English common law therein. Mr. P. M. Smith, of Wellsville, addressed the convention on the subject, "The Past, Present and Future of Our Profession."

There was considerable discussion on the question of educational requirements for admission to the bar, the report of the committee on legal education endorsing the recommendations of the Conference of Bar Delegates of the American Bar Association.

A number of interesting questions were taken up, among them being: marriage and divorce; time of service of civil and petit jurors; liability of parents for torts of children when driving family automobile; and standardized instructions to juries.

A resolution was adopted expressing confidence and faith in Attorney General Daugherty.

Hon. Brooks E. Shell of Lancaster, W. R. Pomerene of Columbus, and A. D. Alcorn of Cincinnati will represent the Association at San Francisco at the Conference of Bar Association Delegates. Mr. A. V. Abernethy of Cleveland, Mr. W. J. Geer of Galion and Hon. Frank M. Clevenger of Wilmington are alternates.

Mr. George B. Harris of Cleveland was elected as president for the ensuing year; Mr. John F. Carlisle of Columbus as treasurer, and Mr. J. L. W. Henney of Columbus was re-elected as secretary.

Some time ago the Canadian Railway Company issued notices to certain hotels, restaurants shops, etc., protesting against the unauthorized use of its initials. One Timothy O'Brien, proprietor of the "C. P. R. Barber Shop" in a prairie village received the warning, and replied as follows:

Dear Sir: I got your notis. I don't want no law soot with yure company. I no yure company. I no yure company owns most everything —ralerodes, steemers, most of the best land and the time, but I don't kno as you own the hole alphabet. The letters on my shop don't stand for yure raleroad, but for somethin better. I left a muther in Ireland, she is dead and gawn, but her memories are dear to me. Her maiden name was Christina Patricia Reardon, and what I want-to no is what you are going to do about it. I suppose you won't argue that the balance of my sign what refers to cut rates has got anything to do with yure raleroods. There ain't been no cut rates round these parts that I nos of.

(Signed) TIMOTHY O'BRIEN.

—*London Post.*

HUMOR OF THE LAW

Mr. Ball met a man whom he knew one morning on his way to his office, and the man asked for a loan.

"Suppose I decide," said Mr. Ball, "to let you have the money, how do I know that I shall get it back at the time you mention?"

"I promise it," replied the man, "on the word of a gentleman."

"Well," replied Mr. Ball, "in that case I may conclude to do it. Come around to my house this evening and bring him with you."

"Now, Pat," said the Magistrate to an old offender, "what brought you here again?"

"Two policemen, sor," was the laconic reply.

"Drunk, I suppose?" queried the Magistrate.

"Yes, sor," said Pat, "both av thim."

Lincoln had in his Cabinet a certain man who was a continual source of irritation and aggravation to him, although the President never allowed the fact to ruffle his serene temper.

Whatever the policy or plan under consideration, there was ever a sharp divergence of opinion between the two men. Lincoln's friends urged him to dismiss this particular Cabinet member, but with no success. In explaining why he did not wish to do so, the President narrated the following whimsical story.

"A number of years ago," said he, "I was passing a field where an old farmer was trying to plow with a very old and decrepit horse. I noticed on the flank of the animal a big horse-fly and I was about to brush it off, when the farmer said: 'Don't you bother that fly, Abe! If it wasn't for that fly this dang old hoss wouldn't move an inch!'"

Mr. Willis—The papers say the Government is going to control everything.

Mrs. Willis—Well, it's going to have an awful time with that boy next door.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client** — Ratification — Neither the acts of an attorney or any other agent will bind the client or principal without ratification, where the attorney or agent is personally interested in the subject-matter involved, or where there exists a conflict between the interests of the client or principal and that of the attorney or agent.—King Const. Co. v. Mary Helen Coal Corporation, Ky., 239, S. W. 799.

2. **Automobiles**—Collision.—Where the driver of an automobile approaching a street intersection continued on his course on the unwarranted assumption that a truck on the intersecting street would turn the corner, and the truck driver, to avoid a collision, made a sudden turn to the right, but collided with the automobile because it also turned, the truck driver was not responsible for the accident.—Cayard v. Carrollton Feed Co., La., 91 So. 437.

3.——Contributory Negligence.—In an action for the death of an occupant of an automobile, a plea of contributory negligence, alleging that the negligent rate of speed and manner of driving was due to a request of and was approved by the occupant, is insufficient as not showing that the occupant was an employer or had any control over the operation of the automobile.—Tyree v. Tudor, N. C., 111 S. E. 714.

4.——Damages.—One who recovers the full value of an automobile, as for a complete destruction, cannot also recover the value of the use thereof.—Barnes v. United Rys. & Electric Co., Md., 116 Atl. 855.

5.——Liability of Owner.—The conclusion which the jury may draw from the fact that the driver of an automobile with the owner's consent was the agent of the owner is only an inference which they may draw, and not a presumption which they must follow in the absence of conflicting evidence.—Fahey v. Madden, Cal., 206 Pac. 128.

6.——Liability of Owner.—If an owner loans his automobile with the understanding that the borrower is to drive it, and knows that the borrower is likely to become intoxicated, the owner is liable for injuries resulting from a collision caused by the borrower's drunkenness.—Mitchell v. Churches, Wash., 206 Pac. 6.

7. **Automobiles**—"Look and Listen."—The rule that it is negligence per se of one driving an automobile not to "look and listen" for a train when approaching a railway crossing is not as a general rule applicable in all of its force to a passenger in a car riding as the invited guest of the driver and who has no control over the driver or his management of the car, but the negligence of such guest must be determined according to all of the facts and circumstances existing at the time of the accident.—Thrasher v. St. Louis & S. F. Ry. Co., Okla., 206 Pac. 212.

8.——State Law.—An act of the Legislature making it a crime to operate an automobile around a curve on a public road without having the same under control, or without reducing the speed thereof to a reasonable and proper rate, is violative of sections 10 and 14 of article 3 of the Constitution of this state, and is void for uncertainty and indefiniteness.—State v. Lantz, W. Va., 111 S. E. 766.

9. **Bankruptcy** — Chattel Mortgage. — Where a chattel mortgage covering all the property of a corporation, which was insolvent when the mortgage was given, was executed within four months of bankruptcy, the burden is on the mortgagee to establish that it was executed and delivered in good faith for a present fair consideration.—In Re Movette Camera Corporation, U. S. D. C., 279 Fed. 174.

10.——Title of Receiver.—Where the record on a petition to require a purchaser to pay the amount bid by him for the interest of a receiver in bankruptcy in a lease and fixtures fails to disclose even a claim to any right, title, or interest whatever, on the part of the receiver, the order granting the petition will be reversed, but where the petitioner bid with his eyes open the reversal will be without prejudice to a further hearing.—In Re Miltones, Inc., U. S. C. C. A., 279 Fed. 105.

11. Banks and Banking—Bank Guaranty Law.—By this system of laws it was the intention of the Legislature that the bank guaranty law shall function in two ways, to wit: First, by immediately paying the depositors of the insolvent bank in full with cash available or that can be made immediately available from the assets of the bank together with the money on hand in the guaranty fund, where such fund is sufficient for that purpose; and, second, where such funds are not sufficient for such purpose, by issuing certificates of indebtedness payable from year to year as money comes into the guaranty fund out of the assessments and emergency assessments levied against solvent banks as provided by law.—State v. Norman, Okla., 206 Pac. 523.

12.——Duties of Cashier.—Services performed by the cashier of a national bank in collecting and disbursing funds with the consent of the liquidating agent pending voluntary liquidation are not outside the scope of the cashier's duties.—Nebraska Nat. Bank v. Union Stockyards Nat. Bank, Neb., 187 N. W. 883.

13.——Liability of Officer.—Defendant, an officer of a company to which plaintiff had intrusted money to invest for her and look after the investment, having, when a trade for a mortgage was under consideration, prevented plaintiff from getting a lawyer to investigate its title and value, by objecting thereto and saying that the company would make an investigation, personally assumed the responsibility of employing adequate means therefor, so that having negligently failed to do so, and the mortgage traded for having proved fraudulent, defendant was liable for the loss, though under the working arrangement between defendant and the president of the company the duty of having investigation made devolved on the president.—Goodnow v. Leeper, Mo., 239 S. W. 135.

14.——Preferred Depositor.—The state is not a preferred depositor in a bank by right of sovereign prerogative, under the common-law rule to secure its revenues, since by Civ. Code 1913, pars. 4637—4655, it has provided for the requiring of a bond to secure its deposits, which right is accorded to no other depositor, and is endowed further by paragraphs 284—305 with visitorial power from the state's superintendent of banks.—In Re Central Bank of Wilcox, Ariz., 205 Pac. 915.

15.——Savings Deposits.—Under St. 1908, c. 520, §§ 1-3, requiring certain deposits with trust companies to be kept in the savings department, and St. 1919, c. 37, relative to the receipt by trust companies of savings deposits at intervals within a period of 12 months, and the rules of a Christmas Club, conducted by a trust company, providing for weekly deposits, requiring presentation of a passbook when making the deposit, prohibiting withdrawals before the final due date, and requiring immediate surrender of the book thereafter, Christmas Club deposits must be considered as savings deposits, and so treated in the liquidation of the company, especially where they were solicited through advertisements and by agents employed to secure savings accounts, and regarded by depositors as such.—In Re Hanover Trust Co., Mass., 135 N. E. 166.

16.——Statement.—Where a bank furnishes depositor a statement of account by balancing and delivering to him his passbook, it is the depositor's duty to examine the passbook and statement without unreasonable delay, and, if he fails to so do within a reasonable time, he is presumed to acquiesce in statement.—Olsen v. People's Sav. Bank, Ark., 239 S. W. 13.

17. **Bill and Notes**—Acceleration.—Where a contract provides that a series of notes shall all become due upon the failure to pay one or more thereof, or interest thereon when due, upon the failure to make such payment, all of the notes ipso facto become due by virtue of the contract, and there is no question as to option involved.—Manes v. Bietsch, Tex., 239 S. W. 307.

18.——Fraud.—In an action by indorsee, on a check on which payment was stopped, against the drawer, in which defendant pleaded fraud by the payee in inducing him to sign the check, on failure of plaintiff to allege in his reply facts making him a holder in due course, admission of testimony of plaintiff over objection that he had no knowledge of the fraud at the time of receiving the check from the payee, and that he did not know for what purpose the check had been issued, was error.—Matteson v. Trask, Mont., 206 Pac. 428.

19.——Fraud—If a bank induced the issuance by a corporation of a false statement to procure its stockholders to sign notes to protect the corporation's overdraft in the bank, and the stockholders had no reasonable opportunity to know the falsity of the statement, and were deceived thereby to the knowledge of the bank, the fraud of the bank would render the notes unenforceable.—Marksberry v. First Nat. Bank, Ky., 239 S. W. 461.

20.——Holders for Value.—Where an employe of certain brokers opened an account in a fictitious name and gave orders to the brokers to buy and sell cotton for future delivery for that account, guaranteeing the payment of any resulting indebtedness, and later the employe gave his note to cover the resulting indebtedness, and the account was marked settled, the brokers were holders of the note for value, within Negotiable Instruments Law, § 51, providing that a pre-existing debt constitutes value.—In Re Ranlett's Estate, N. Y., 193 N. Y. S. 637.

21.——Non-Negotiable.—A title-retaining instrument in the form of a promissory note, which gives the holder power to declare the money due thereon and take possession of the property for which it is given whenever he deems himself insecure, is not payable at a fixed or determinable future time, and is nonnegotiation under C. S. §§ 5868 and 5872.—Moyer v. Hyde, Idaho, 204 Pac. 1068.

22.——Rate of Interest.—The charging of interest on $60,000 loan at the rate of 14.8 per cent. per annum, prior to the repeal of Civ. Code, § 1918, entitling the parties to agree in writing for the payment of any rate of interest, held not so excessive as to constitute the transaction an unconscionable one.—Wilbur v. Griffins, Cal., 206 Pac. 112.

23. **Brokers**—Commission.—Where the owner of lots listed with a broker for sale at a fixed price agreed conditionally with a purchaser procured to trade the lots for an automobile as a satisfactory equivalent, and then by mutual consent they withdraw therefrom, and thereafter, on discovering that he had only a one-fifth interest in the lots, they traded automobiles, the owner conveying his interest in the lots to boot, the broker, having nothing to do with the last-mentioned trade, which was entirely separate from the first, was not entitled to a commission since the contract was not performed according to its terms, and, the broker having no exclusive right in the premises, the owner had the right, without reference to him or his claim, to deal in good faith with his property on terms not involving an appropriation of what the broker did.—Garnet v. Gunn, Ala., 91 So. 382.

24. **Carriers of Goods**—Delivery Service.—Where the evidence showed that an express company furnished pick-up and delivery service to places in the same city as petitioner which were situated further from appellee's place of business than the petitioner, and which did not furnish as much business as petitioner, and that it furnished similar services to several of plaintiff's competitors in other cities, though they were situated further from its offices than was petitioner, and that pick-up and delivery service within reasonable limits was included in the service for which charge was made, an order requiring the company to furnish pick-up and delivery service to petitioner was reasonable.—John Morrell & Co. v. American Ry. Express Co., S. D., 187 N. W. 724.

25.——Demurrage.—Where a carrier under a rule of the Interstate Commerce Commission entitling it to demurrage on cars of coal held at a certain harbor at the terminus of its line "or intermediate storage yards for transshipment," sues for demurrage on cars consigned to such place, but held in transit at storage yards 14 miles therefrom, it must plead and prove such rule, and that consignee did not have facilities at the dock to receive the freight during the time for which demurrage was claimed, demurrage ordinarily not beginning to accrue until after freights reached destination.—Bessemer & L. E. R. Co. v. Ford Collieries Co., Pa., 116 Atl. 802.

26. **Carriers of Live Stock**—Negligence.—Notice of a claim for damages to an interstate shipment is not required, where the loss or damage complained of was incurred while loading or unloading or in transit by the carrier's negligence.—Whiteside v. Chicago, M. & St. P. Ry. Co., Mo., 239 S. W. 150.

27. **Carriers of Passengers**—Intrastate Rates—Rev. Codes 1921, § 6586, prohibiting railroads from charging an intrastate passenger rate in excess of three cents per mile, held invalid in view of order of Interstate Commerce Commission fixing the passenger rate at three and six-tenths cents per mile.—State v. Northern Pac. Ry. Co., Mont., 205 Pac. 959.

28.——Negligence.—Where a female passenger, 69 years old and weighing 170 pounds, had not alighted when the car started and was carried nearly to the next street where cars customarily stopped without signal, the act of the conductor in unnecessarily signaling for an emergency stop causing a bounce that threw the passenger from the car was negligence.—Funk v. New Orleans Ry & L. Co., La., 91 So. 506.

29. **Commerce**—When.—Neither the fact that an article is manufactured for export to another state, nor the intent of the manufacturer in that regard, fixes the time when it belongs to commerce.—Eaton, Crane & Pike Co. v. Commonwealth, Mass., 135 N. E. 170.

30. **Constitutional Law**—Accredited Representative of Foreign Government.—The certificate of the Secretary of State that a certain person is the accredited representative of the government of a foreign nation recognized by the United States Government is conclusive on the courts.—The Rogday, U. S. D. C., 279 Fed. 130.

31.——Police Power.—Crawford & Moses' D'g. §§ 1606-1699, creating the Corporation Commission and conferring upon it jurisdiction to regulate rates of public service corporations, such as electric companies, was not invalid as impairing obligation of contracts, but was a valid exercise of the police power of the state.—Town of Pocahontas v. Central Power & Light Co., Ark., 239 S. W. 1.

32.——State Statute.—The constitutionality of a statute authorizing a prosecution involving the punishment for crime may be questioned at any stage of the proceeding.—State v. Rheaume, N. H., 116 Atl. 758.

33. **Corporations**—Dividends. — Since an unrecorded transfer of stock is good between the parties, a purchaser of stock on which dividends had been declared was entitled to them as against the seller, though by reason of the latter's neglect the shares were not transferred before the books of the corporation were closed, pursuant to the directors' resolution making the dividends payable to stockholders of record on a day subsequent to such purchase, in the absence of a stipulation reserving the dividends to the seller.—Richter v. Light, Conn., 116 Atl. 600.

34.——Ownership of Stock.—Where a certificate of stock transferred to an employe gave the transferor option to repurchase on termination of employment, at its book value as shown by the next preceding inventory of the corporation, the transferor's letter to the employe following termination of employment informing him of his exercise of the option giving the book value of the stock "as shown by the audit," and stating that amount of employe's indebtedness to corporation and which had been assigned to him would be offset against amount due the employe on such stock and asking if such settlement was satisfactory, did not divest the employe of the ownership of the stock, and he had the right before parting with it to satisfy himself as to the correctness of the audit by an examination of the corporate books. Dreyfuss & Son v. Benson, Tex., 239 S. W. 347.

35. **Corporations**—Stock Subscription.—The refusal of a corporation to issue stock to a subscriber, even though actually paid for by the latter, did not discharge such subscriber from the obligation to complete payment on a previous unrelated stock subscription contract made by such subscriber with such corporation.—Texas Co-Op. Inv. Co. v. Clark, Tex., 239 S. W. 198.

36.——Transfer of Stock.—A transfer of stock on the books of a foreign corporation maintaining a transfer agency in this state may be enforced here against the corporation or the officers authorized to make such transfer.—Hale v. West Porto Rico Sugar Co., N. Y., 193 N. Y. S. 555.

37. **Damages**—Measure of.—Damages in personal actions cannot be measured by the amount paid out for tours to regain health.—San Antonio Machine & Supply Co. v. McKinley, Tex., 239 S. W. 340.

38. **Death**—Measure of Damages.—The measure of the parents' damages for the loss of a minor child is the value of the child's services during his minority, and burial and other expenses incurred by his death or sickness, less the expense of his support and maintenance during that time.—Degan v. Jewell, Mo., 239 S. W. 66.

39. **Divorce**—Alimony.—A decree was entered granting an absolute divorce to the wife, but nothing was stated therein as to the custody of the infant children of the parties or as to alimony for the wife, and the cause was dropped from the docket; at a subsequent term, on motion of the wife, the cause was reinstated on the docket, without notice to the husband other than by order of publication, and a decree was then entered, awarding the custody of the children to the wife and also permanent alimony. Such decree, in so far as it awards alimony, is void.—Marks v. Mitchell, W. Va., 111 S. E. 763.

40. **Eminent Domain**—Street Grade.—Under the St. Louis charter and Rev. St. 1919, § 7778, consequential damages to property caused by a change in the grade of a street as well as damages for the actual taking of property should be ascertained and paid before the work of regarding the street is done by the city.—City of St. Louis v. Wallrath, Mo., 239 S. W. 110.

41. **Insurance** — Acceptance of Application.—When an applicant for insurance had paid the premium to the agent of the company authorized to receive it, and the company received its portion of the premium before acting on the application, and had assumed the duty of returning the premium on a rejection of the application, and the applicant had done everything required of him, and had received no notice of adverse action on his application or cause for it, he could assume after several months that the company had accepted his application.—Great Southern Life Ins. Co. v. Dolan, Tex., 239 S. W. 236.

42.——Misrepresentation.—Under Laws 1907, c. 46, § 1, insured's misrepresentation as to age in application for certificate did not preclude recovery as a matter of law; the question being one for the jury as to whether the misrepresentation contributed to the insured's death.—Brotherhood of American Yeomen v. Manz, Ariz., 206 Pac. 403.

43.——Payment of Premium.—Where an application for life insurance contains a provision that the policy shall not take effect unless the application shall have been approved by the company and the first annual premium shall have been paid during the good health of the applicant, a contract of insurance is not effected upon the approval of the application, unless payment of the first premium has been made or waived.—Swetland v. New World Life Ins. Co., Idaho, 206 Pac. 190.

44.——Reinstatement.—In an action on a policy, lapsed for nonpayment of premium, where the issue was whether receipt of a note amounted to payment of defaulted premium and waived a reexamination, insured not having presented himself for reinstatement, examination evidence of the widow and a doctor as to insured's appearance for 2 or 3 days after the note was given was irrelevant and prejudicial.—Darby v. Northwestern Mut. Life Ins. Co., Mo., 239 S. W. 68.

45. **Intoxicating Liquors**—Admissible Evidence.—Where the possession of intoxicating liquor is open and obvious so that any one within reasonable distance can readily and plainly see it, no search warrant is necessary, and the evidence thus obtained may be received upon the trial of the accused.—Royce v. Commonwealth, Ky., 239 S. W. 795.

46.——Police Power.—The Eighteenth Amendment of the Constitution of the United States does not abridge or abrogate the police power reserved to the states by the Tenth Amendment, so as to render invalid Acts 1917, c. 4, prohibiting manufacture, sale, etc., of intoxicating liquor.—Elwood Trust Co. v. Fritz, Ind., 135 N. E. 145.

47.——Return to Owner.—Under the National Prohibition Law, providing that property seized under search warrant shall be subject to such disposition as the court may make thereof, a United States commissioner, who issued a warrant under that act to search for intoxicating liquor, is without jurisdiction to order the liquor seized under warrant to be returned to claimant, and such relief can only be obtained from the court.—Diligannis v. Mitchell, U. S. D. C., 279 Fed. 131.

48. **Libel and Slander**—Libel Per Se.—Newspaper articles referring to plaintiff as a German spy or agent and charging her with smuggling goods to Mexico, some of which were intended for shipment to Germany, held libelous per se.—Herald News Co. v. Wilkinson, Tex., 239 S. W. 294.

49. **Licenses**—Foreign Corporation.—A sale of capital stock issued by a Maine corporation, having authority to transact business in Nebraska, may be declared void in Nebraska, if made in Missouri to a resident thereof without a license in defiance of a Missouri statute enacted to protect the people of that state from fraud and imposition and subjecting the offender to fine and imprisonment.—Rhines v. Skinner Packing Co., Neb., 187 N. W. 874.

50. **Master and Servant**—Assumption of Risk.—Where plaintiff, a carpenter, had worked two weeks near an excavation involving blasting before he was injured by a backing truck on a roadway jointly used by men and trucks when a blast was imminent, such use of the roadway occurring two or three times a day, the danger from the use of the roadway by men and trucks was apparent to his observation, and he assumed the peril.—Deshaies v. Raymond Concrete Pile Co., N. H., 116 Atl. 921.

51.——Commissions.—A contract of employment set forth the compensation as $130 per month "and 5 per cent. of total net profits earned. * * * In other words, 5 per cent. on net brokerage received during 1917 and payable on January 1, 1918. If Thomas deal goes through whatever there is in it to be considered as brokerage earned." Held, that "profits earned" and "brokerage earned" had the same meaning, and the employee was entitled to commissions on profits earned, but which were not collected through no fault of his own.—Keithly v. Craig, Ind., 135 N. E. 156.

52.——Safe Tools.—The master's duty to provide reasonably safe tools is not delegable, and a servant who makes or sharpens a tool used by another is the representative of the master, and not a fellow servant.—Gaither v. E. H. Clement Co., N. C., 111 S. E. 782.

53. **Municipal Corporations**—Falling Glass.—A city was not liable for injuries sustained on a sidewalk from a pane of glass falling from an adjoining building unless the window pane was insecurely fastened, or had become loose, and not even then unless it knew of such condition, or on a proper inspection might have known thereof.—Rice v. White, Mo., 239 S. W. 141.

54.——Negligence.—Plaintiff, who stepped from automobile at a time when it was dark without knowledge of the existence of trench dug from defendant's lot line across sidewalk into street, was not contributorily negligent in not crossing the trench on the sidewalk where it was covered.—Wirts v. Luckett, Ind., 135 N. E. 9.

55.——Negligence.—In an action for damages alleged as a result of the bursting of a water pipe, where defendant pleaded negligence of plaintiffs because they occupied the basement in violation of Seattle Ordinances Nos. 22839 and 36792, requiring drains, an instruction that "defendant would not be liable for any damages resulting to the plaintiffs by reason of the absence of drains, as provided by said ordinances, and if you find that plaintiffs' property would have been damaged even though plaintiffs had complied with said sections of the ordinances, then plaintiffs would be entitled to recover for any damages they sustained which was not the result of the absence of drains, as provided by said ordinances" was proper.—Kotkins v. City of Seattle, Wash., 206 Pac. 11.

56.——Unreasonable Ordinance.—Where the traffic conditions in business part of a city were congested, a city ordinance, passed by the city council in pursuance of power delegated by Law 1915, c. 1263, prohibiting motor busses from operating in the business district and restricting them to certain streets, was not void as arbitrary and unreasonable, notwithstanding the loss of patronage to the owners of the motor busses, whose licenses were subject to a change in legal provisions as to routes to be traveled, and the inconvenience to the patrons.—Fritz v. Presbrey, R. I., 116 Atl. 419.

57. **Railroads**—Negligence.—Even though a railroad ordinarily used one of its double tracks for traffic in one direction, and the other for traffic in the opposite direction, it was not negligence for it, as it frequently did, to transfer a train to a track ordinarily used for trains moving in the opposite direction.—Director General of Railroads v. Hubbard's Adm'r., Va., 111 S. E. 446.

58. **Sales**—Breach of Contract.—Personal Property Law, § 146, providing that, where the buyer has repudiated his contract before delivery, the seller may totally rescind the sale by giving notice of his election to the buyer, is not limited to the seller's election to treat the contract as at an end for all purposes, but requires him to give notice of election to treat the contract as rescinded to the extent of excusing his delivery of the goods, but nevertheless to hold the buyer liable for damage because of his anticipatory breach of the contract.—Hutt v. Hausman, N. Y., 193 N. Y. S. 452.

59.——Fraud.—Failure of seller of cloth to tell the buyer that it had been rejected by the government when tendered to it for private soldiers' uniform was not a fraud justifying rescission of the contract; the fact that the cloth was a little off-color, because of which alone it was rejected, having been disclosed to the buver.—South Bend Woolen Co. v. Jacob Reed's Sons, Pa., 116 Atl. 805.

60.——Fraudulent Representations.—One induce dto purchase diseased cattle by fraudulent representations has a lien on the cattle for the purchase price.—Alexander v. Walker, Tex., 239 S. W. 309.

61.——Rescission.—Where a sale of goods is executed, the purchaser cannot rescind merely because of a breach of warranty in the quality of the goods, in the absence of fraud or an agreement to rescind.—American Sugar Refining Co. v. Martin-Nelly Grocery Co., W. Va., 111 S. E. 759.

62.——Specifications.—Where building contract specifications required window frames to be given a priming coat before being placed, but did not state that the priming should be a part of the millwork, and were not specifically referred to in the contract between the millmen and contractor, which consisted merely of proposal to furnish certain materials delivered and acceptance thereof, the millmen were not required to do the priming.—Dalk v. Rowntree, Wash., 206 Pac. 22.

63. **Taxation**—National Bank Stock.—Rev. St. U. S. § 5219, permits a state to tax national banks, but not "at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of such state," and Tax Law, § 24, complies therewith by providing that tax on stock of national banks shall not be greater than on other moneyed capital.—People v. Goldfogle, N. Y., 193 N. Y. S. 601.

64. **Workmen's Compensation Act**—"Agricultural Laborer."—A sheep herder is an "agricultural laborer" not entitled to compensation for injuries under the Industrial Act, making the act inapplicable to employers of "agricultural laborers," the term "agricultural" including the rearing and care of live stock.—Davis v. Industrial Commission, Utah, 206 Pac. 267.

65.——Epilepsy.—In proceedings under Workmen's Compensation Act for death of employee in which employer and insurer claimed that employee's fall was the result of an epileptic fit, and not the result of stumbling over rivet as alleged by claimant, refusal of prayer denying compensation if the vertigo or epileptic fit "contributed" to the fall held proper, since the injuries caused by fall may have arisen out of the employment, even though the vertigo or epileptic fit contributed to the fall.—Baltimore Dry Docks & Ship Building Co. v. Webster, Md., 116 Atl. 842.

66.——Gas.—Injury to an employee, while working on a special occasion, by inhaling gas, wholly unexpected by him, was caused by accident, within Workmen's Compensation Act.—Tintic Milling Co. v. Industrial Commission, Utah, 206 Pac. 278.

67.——Loss of Fingers.—A servant who lost two joints of each of three fingers and part of the first joint of the first finger was not entitled to compensation based upon the loss of the use of the hand, but only specific compensation for the loss of the fingers or portions thereof under the Workmen's Compensation Act.—MacKenzie v. Western Indemnity Co., Tex., 239 S. W. 317.